731. It is interesting to note that the court which rendered the conservative opinion, contrary to the general spirit of the Code, sat in New York, a code state, while the liberal view was announced in the New England circuit, which has generally retained the common law procedure. Possibly this whole discussion in these federal cases was unnecessary, for it has frequently been held, in the absence of any statute whatever, that such a replication raises a perfectly good issue in an action at law. *M'Henry* v. *M'Henry & Co.*, 14 Leg. Int. 292 (Pa.); *Friedburg* v. *Knight*, 14 R. I. 585; *Piper* v. *B. & M. R. R.*, 75 N. H. 228; *U. P. Ry. Co.* v. *Harris*, 158 U. S. 326; *Memphis St. Ry. Co.* v. *Giardino*, 116 Tenn. 368; 1 CHITTY, PLEADING, *553. Compare *Holbrook, Cabot & Rollins Corp.* v. *Sperling*, 239 Fed. 715. On the general subject of equitable defenses in actions at law see "Equitable Defenses under Modern Codes," by E. W. Hinton, 18 MICH. L. REV. 717.

QUO WARRANTO—FORMER DECISION WITH DIFFERENT RELATORS RES ADJUDICATA.—A proceeding in the nature of *quo warranto* was begun in the name of the state on the relation of certain individuals to question the right of a municipal corporation to exist. The defendant city pleaded a former judgment in its favor, in an action commenced by different relators seeking dissolution of the city for similar reasons. *Held*, the judgment in the former action was *res adjudicata* as to the cause of action involved in this suit. *Town of Tallassee* v. *State* (Ala.), 89 So. 514.

If the former proceedings resulted in a judgment on the merits upon the same subject matter, and the parties were the same in the two suits, the former judgment was *res adjudicata* in the later action. 9 ENC. PL. & PR. 611. The principal case agrees with almost unanimous authority that in proceedings in the nature of *quo warranto* the public is the real and the relator a nominal party; a difference in relators then does not result in a difference in the real party interested in the litigation. *State* v. *Harmon*, 31 Oh. St. 250; *Wright* v. *Allen*, 2 Tex. 158; *McClesky* v. *State*, 4 Tex. Civ. App. 322; *Shumate* v. *Supervisors of Fauquier Co.*, 84 Va. 574; *State* v. *Ry. Co.*, 135 Ia. 694; *State* v. *Superior Court*, 70 Wash. 670; *State* v. *Willis*, 19 N. D. 209; *Ashton* v. *City of Rochester*, 133 N. Y. 187; *City Council of Montgomery* v. *Walker*, 154 Ala. 242; *People* v. *Harrison*, 253 Ill. 625. *State* v. *Cincinnati Gas, Light and Coke Co.*, 18 Oh. St. 262, *contra* (*semble*). In a few states a claimant to public office is given a remedy analogous to that of *quo warranto* proceedings, but purely to test his right to the office as against the incumbent. 23 AM. & ENG. ENC. OF LAW (Ed. 2), 616, and cases cited. A judgment in such an action is not *res adjudicata* should another claimant attempt to exercise the same remedy or the state bring *quo warranto* to test the occupant's right to the office. *Modlin* v. *State*, 175 Ind. 511; ANN. CAS. 1913 C 671, note.

SALES—WHAT CONSTITUTES GOOD FAITH IN PURCHASE OF CHATTELS.—B purchased an automobile from P, giving therefor a forged check, and subsequently sold the car for value to D, with whom he was acquainted.

In response to D's inquiry B said he had forgotten the name of his vendor, but would get the name if D wished. D did not insist, but if he had done so and had inquired from P he would have learned of the fraud. In an action of replevin, *held,* D was a bona fide purchaser and thus protected. *Hoham* v. *Aukerman-Tuesburg Motors* (Ind., 1922), 133 N. E. 507.

That one who has a voidable title and possession of a chattel can pass an indefeasible title to a bona fide purchaser seems well settled. *Truxton* v. *Fait & Slagle Co.,* 1 Pennewill (Del.) 483; 9 MICH. L. REV. 239, note. But what constitutes good faith is more or less undetermined. Under the Uniform Sales Act, § 76 (not in force in Indiana), a thing is done in good faith when it is in fact done honestly, whether it be done negligently or not. With this indication of the legislative attitude toward good faith, perhaps one should not quarrel with a court which reaches the same conclusion. The distinction between what a purchaser knows and what he ought to know is pointed out in *Pierce* v. *O'Brien,* 189 Mass. 58. In the instant case there is no discussion of the matter, merely the bald assumption that the purchase was *bona fide.* In view of the large number of cars which are stolen daily it would seem that a buyer might well be put on inquiry by the sudden lapse of memory of his vendor as to where he obtained the car. Circumstances which would lead a prudent man to suspect an adverse claim will prevent a transaction from being *bona fide. Pringle* v. *Phillips,* 5 Sandf. (7 N. Y. Super.) 157. Whether there were such circumstances would seem to be a question of fact for the jury. See WILLISTON ON SALES, § 621; JONES ON THE POSITION AND RIGHTS OF A BONA FIDE PURCHASER FOR VALUE OF GOODS IMPROPERLY OBTAINED.

TAXATION—STOCK DIVIDENDS NOT TAXABLE AS INCOME.—Large profits of X corporation were capitalized and bonus stock issued to Blott and other stockholders. *Held* (two Lords dissenting), that such "stock dividends" were not taxable as "income" to stockholders under Finance Act, 1910. *Inland Revenue Commissioners* v. *Blott* [1921], 2 A. C. 171.

If the thing distributed consisted of stock in another corporation it is clear that such "stock dividends" would be taxed as "income." *Peabody* v. *Eisner,* 247 U. S. 347; *State* v. *Lee,* 172 Wis. 381. And the same result was reached in a very recent case where the shares of a new corporation were distributed to stockholders of the old under a transaction which was a mere financial reorganization of the corporation's business. *U. S.* v. *Phellis* (Nov. 21, 1921), 42 Sup. Ct. 63. The principal case accords with the leading American decision in point. *Eisner* v. *Macomber,* 252 U. S. 189 (four judges dissenting). Both cases apparently take the view that a "stock dividend" paid pursuant to a capitalization of profits is not "income" to the person receiving such dividend. The writers of the three prevailing opinions in the principal case considered the reasoning in *Eisner* v. *Macomber, supra,* relevant, but relied upon the case of *Bouch* v. *Sproule* (1877), 12 A. C. 385, which decided that as between life tenant and remainderman the latter was entitled to a stock dividend. The American decisions have not considered